

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

JOHNNIE E SAVAGE

Claimant,

and

VAN-WALL EQUIPMENT INC

Employer.

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HEARING NUMBER: 07B-UI-09589

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4(3)

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

The claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not follow the instructions on the notice of hearing. Therefore, good cause has not been established to remand this matter. The remand request is **DENIED**.

Mary Ann Spicer

DISSENTING OPINION OF ELIZABETH L. SEISER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would remand this matter for the taking of additional evidence. Based on this record, I would find that the issue of the claimant's being able and available pertains to availability for the part-time employees who have a duty to look for other work. The record contains no evidence with regard to these facts, nor does the record contain any evidence as to whether credits earned were exclusively from on-call work. As the Iowa Court of Appeals noted in Baker v. Employment Appeal Board, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise. A remand of this matter would allow for a more complete record to be made.

Elizabeth L. Seiser

AMG/fnv